

AMENDED IN SENATE MAY 5, 2015  
AMENDED IN SENATE APRIL 20, 2015  
AMENDED IN SENATE APRIL 7, 2015

**SENATE BILL**

**No. 648**

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**Introduced by Senator Mendoza**  
(Coauthor: Assembly Member Levine)

February 27, 2015

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An act to amend Sections 1400, 1401, and 1404 of, and to add Sections 1402, 1409.4, 1409.6, 1409.7, and 1409.8 to, the Health and Safety Code, relating to health and care facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 648, as amended, Mendoza. Health and care facilities: referral agencies.

Existing law requires a referral agency to obtain a license from the State Department of Public Health in order to refer a person to any extended care facility, skilled nursing home, or intermediate care facility. Existing law exempts a local public agency performing referral services without cost from these provisions. Under existing law, a violation of these provisions is subject to a civil penalty and suspension or revocation of the license.

This bill would additionally require a referral agency to obtain a license in order to refer a person to a residential care facility for the elderly. The bill would prohibit a referral agency from holding any power of attorney or any other property of a ~~client~~, *and person receiving referral services, or from disclosing any personal information of a person receiving services, unless expressly authorized to do so.* The bill would require a referral agency to provide ~~specified written notice a~~

*disclosure statement, as specified, to each person receiving its services; services, and to retain, for 4 years, a signed acknowledgment from the person being referred, or his or her conservator, guardian, family member, or agent under a power of attorney, stating that the disclosure statement was received. The bill would state that failure to provide the disclosure statement or retain the acknowledgment, with the intent to mislead the public on the nature of the services provided, constitutes unfair competition and is subject to a civil penalty of up to \$2,500. The bill would also require referral agencies to maintain liability insurance in specified amounts.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1400 of the Health and Safety Code is  
2     amended to read:  
3     1400. (a) It is unlawful for any person, association, or  
4     corporation to establish, conduct, or maintain a referral agency or  
5     to refer any person for remuneration to any extended care facility,  
6     skilled nursing home, intermediate care facility, or residential care  
7     facility for the elderly, or a distinct part of a facility providing  
8     extended care, skilled nursing home care, or intermediate care,  
9     without first having obtained a written license as provided in this  
10    chapter from the director or from an inspection service approved  
11    by the director pursuant to Section 1257.  
12    (b) It is unlawful for any person, association, or corporation to  
13    establish, conduct, or maintain a referral agency or to refer any  
14    person for remuneration to any person or agency outside a  
15    long-term health care facility, as defined in Section 1418, for  
16    professional services for which the long-term health care facility  
17    does not employ a qualified professional person to furnish a  
18    specific service, including, but not limited to, laboratory,  
19    diagnostic, or therapy services, unless the long-term health care  
20    facility complies with current federal and state laws regarding the  
21    provision of these services and all of the following conditions are  
22    met:  
23    (1) The services will be provided in accordance with  
24    professional standards applicable to the provision of these services  
25    in a long-term health care facility.

1 (2) The long-term health care facility assumes responsibility  
2 for timeliness of the services.

3 (3) Services are provided or obtained only when ordered by the  
4 attending physician and a notation is made in the resident's medical  
5 chart reflecting that the service has been provided to the resident.

6 (c) It is unlawful for any person, association, or corporation to  
7 establish, conduct, or maintain a referral agency or to refer any  
8 person for remuneration to any residential care facility for the  
9 elderly for professional services if that facility does not meet the  
10 licensing standards established in Chapter 3.2 (commencing with  
11 Section 1560).

12 SEC. 2. Section 1401 of the Health and Safety Code is amended  
13 to read:

14 1401. As used in this chapter "referral agency" means a private,  
15 profit or nonprofit agency that is engaged in the business of  
16 referring persons for remuneration to any extended care facility,  
17 skilled nursing home, intermediate care facility, or residential care  
18 facility for the elderly, or a distinct part of a facility providing  
19 extended care, skilled nursing home care, or intermediate care. *A*  
20 *residential care facility for the elderly is not a referral agency if*  
21 *it does either of the following:*

22 (a) *Provides discounts or other remuneration to residents or*  
23 *their families for referring new or prospective clients.*

24 (b) *Provides remuneration to staff for marketing or sales offers.*

25 SEC. 3. Section 1402 is added to the Health and Safety Code,  
26 to read:

27 1402. "Residential care facility for the elderly" has the same  
28 meaning as set forth in Section 1569.2.

29 SEC. 4. Section 1404 of the Health and Safety Code is amended  
30 to read:

31 1404. No licensee under this chapter shall have a direct or  
32 indirect financial interest in any facility doing business with the  
33 licensee.

34 SEC. 5. Section 1409.4 is added to the Health and Safety Code,  
35 to read:

36 1409.4. (a) ~~A~~ *Prior to any referral, a licensee shall provide*  
37 *each person receiving services from the licensee with-written*  
38 *notice, in 16-point bold type, of a disclosure statement containing*  
39 *all of the following:*

1 (1) Whether the licensee has an agreement or contract with the  
2 facility to which the person is being referred.

3 (2) That a commission or fee will be received by the licensee  
4 from the facility as a result of the referral, if applicable.

5 (3) Any gift or exchange of monetary value between the facility  
6 and the licensee that is in addition to, or in lieu of, a commission  
7 or fee.

8 (4) Any fee charged to the person or persons by the licensee.  
9 The notice shall include a description of the services being rendered  
10 for that fee and the licensee's refund policy.

11 (5) The licensee's contact information, including address and  
12 telephone number, and the licensee's privacy policy. ~~The privacy~~  
13 ~~policy shall be placed clearly and prominently at the front of the~~  
14 ~~written notice.~~ *The privacy policy may be provided as an Internet*  
15 *Web site link consistent with provisions set forth in Section 22575*  
16 *of the Business and Professions Code.*

17 (6) The date of the licensee's most recent tour or visit to the  
18 facility and, as appropriate, ~~a review or summary of report of any~~  
19 ~~violations as identified by~~ the most recent evaluation report for a  
20 residential care facility for the elderly prepared pursuant to Section  
21 1569.33.

22 (7) Information regarding the services the referred facility offers,  
23 including, but not limited to, intermittent skilled nursing care,  
24 memory care, assistance with and distribution of medication, and  
25 other services, if applicable.

26 (8) The contact information, including address and phone  
27 number, of the State Department of Social Services or State  
28 Department of Public Health, as appropriate, and the contact  
29 information for filing consumer complaints, including contact  
30 information for the local long-term care ombudsman.

31 *(b) (1) The disclosure statement shall be dated and shall*  
32 *contain, in addition to the requirements of subdivision (a), the*  
33 *name of the person being referred.*

34 *(2) If the disclosure is provided in written form, it shall be*  
35 *printed in 16-point bold type.*

36 *(3) If the disclosure statement is provided electronically, it shall*  
37 *be consistent with provisions regarding electronic records set forth*  
38 *in Section 7001 of Title 15 of the United States Code, and shall be*  
39 *displayed on the licensee's Internet Web site in a larger type than*  
40 *the surrounding text.*

1 ~~(b)~~

2 (c) The licensee shall provide the ~~written notification~~ *disclosure*  
3 *statement* pursuant to subdivision (a) in the same language in which  
4 the licensee negotiates any referral services with the person  
5 receiving services.

6 ~~(e) The~~

7 (d) *Prior to any referral, the licensee shall retain a signed*  
8 *acknowledgment from the person being referred, or his or her*  
9 *conservator, guardian, family member, or agent under a power of*  
10 *attorney, stating that the ~~written notice disclosure statement~~*  
11 *required by this section was received. The ~~acknowledgment signed~~*  
12 *acknowledgment shall be executed with one of the following:*

13 (1) *The signature of the person being referred, or his or her*  
14 *conservator, guardian, family member, or agent under a power of*  
15 *attorney on the exact disclosure statement.*

16 (2) *An electronic signature that includes the date, time, and*  
17 *Internet provider address and displays the exact disclosure*  
18 *statement document.*

19 (3) *A faxed confirmation that includes the date, time, and fax*  
20 *number and displays the exact disclosure statement document.*

21 (e) *The acknowledgment required by this section shall be*  
22 *retained for a period of no less than four years.*

23 (f) *If the disclosure statement, or any other referral-related*  
24 *document, is provided electronically, the licensee shall provide a*  
25 *written copy, in a 16-point bold type, to the person being referred,*  
26 *or his or her conservator, guardian, family member, or agent under*  
27 *power of attorney following any referral. This written copy may*  
28 *be provided by fax, if applicable.*

29 (g) *Any violation of this section with the intent to directly or*  
30 *indirectly mislead the public on the nature of services provided*  
31 *by the referral agency will constitute unfair competition which*  
32 *includes unlawful, unfair, or fraudulent business acts or practices*  
33 *and unfair, deceptive, untrue, or misleading advertising. Any*  
34 *person or entity that engages in unfair competition shall be liable*  
35 *for a civil penalty not to exceed two thousand five hundred dollars*  
36 *(\$2,500) for each violation.*

37 SEC. 6. Section 1409.6 is added to the Health and Safety Code,  
38 to read:

39 1409.6. (a) It is unlawful for a licensee to share any personal  
40 information, including, but not limited to, the name, address, age,

1 gender, or medical information of the person receiving services  
2 from the licensee, with any unauthorized person or third-party  
3 affiliate of the ~~licensee~~. *licensee, unless expressly authorized*  
4 *pursuant to subdivisions (b) and (c).*

5 *(b) The person being referred, or his or her conservator,*  
6 *guardian, family member, or agent under power of attorney may*  
7 *expressly authorize the licensee to share his or her name and*  
8 *telephone number, or email address, with the facility, or facilities,*  
9 *being referred. The express authorization shall be separate from*  
10 *the disclosure statement required by this article and shall include*  
11 *both of the following:*

12 *(1) Disclosure, in a form consistent with the requirements of*  
13 *Section 1409.4, which clearly and conspicuously states the name,*  
14 *location, and contact information of the facility, or facilities, that*  
15 *will receive the contact information, and the format in which the*  
16 *facility will receive the contact information.*

17 *(2) The signature of the person giving authorization, consistent*  
18 *with the requirements of subdivision (d) of Section 1409.4.*

19 *(c) The licensee shall only share the name and contact*  
20 *information of the individual who has provided express*  
21 *authorization, pursuant to subdivision (b).*

22 SEC. 7. Section 1409.7 is added to the Health and Safety Code,  
23 to read:

24 1409.7. It is unlawful for a licensee to hold any power of  
25 attorney for a person receiving placement referral services from  
26 that licensee, or to receive or hold a client's property in any  
27 capacity.

28 SEC. 8. Section 1409.8 is added to the Health and Safety Code,  
29 to read:

30 1409.8. On and after July 1, 2016, all persons, associations, or  
31 corporations licensed pursuant to this chapter shall maintain  
32 liability insurance coverage in an amount of at least one million  
33 dollars (\$1,000,000) per referred person and three million dollars  
34 (\$3,000,000) in the total annual aggregate, for negligent acts or  
35 omissions by the licensee.

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2 CORRECTIONS:  
3 Text—Page 4.  
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